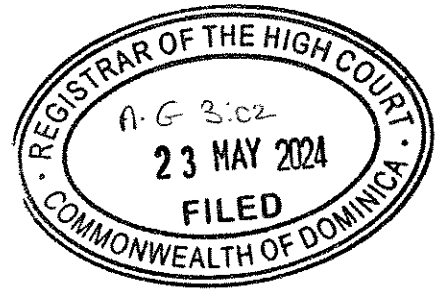


IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

COMMONWEALTH OF DOMINICA
CASE NO: DOMHCR: 2024/0006



BETWEEN:

THE STATE
V
JOHNNY VIVIAN PHILLIP

APPEARANCES:

Ms Sherma Dalrymple, DPP, and Ms Daina Matthew, State Counsel, for the State
Mr Bernard Pacquette of Sage Chambers with Mr Peter Alleyne for the Defendant

2024: April 22nd, 23rd,
May 13th, 17th

SENTENCING

1. **COLIN WILLIAMS J:** On Monday the 22nd of April 2024, the prisoner, Mr Johnny Vivian Phillip, requested that the indictment on a charge of murder contrary to the common law be put to him once again. He pleaded guilty to the offence as charged. Originally, Mr Phillip's trial was scheduled to commence that morning (22nd of April 2024) and the request to have the indictment read to him again was made prior to the jury being empanelled.
2. The following day, Tuesday the 23rd of April 2024, the State presented the facts of its case against Mr Phillip. He disagreed with two aspects of the facts of the State's case. The two things he disagreed with did not affect the elements of the offence, neither did the State seek to rely on them. Mr Phillip was formally convicted of murder in keeping with his guilty plea.

3. The indictment, (as amended on the 15th of April 2024), recited in its particulars of offence that:

“Johnny Vivian Phillip, between the 6th and 9th day[s] of March 2020, at Rogiste, Petite Savanne, in the Parish of St Patrick, in the Commonwealth of Dominica, in the district aforesaid did murder Timothy Avondale Anselm.”

The Facts

4. Mr Phillip is originally from Marigot. At the time of the incident, he resided at Petite Savanne. The deceased, Mr Timothy Avondale Anselm, familiarly known as 'Oho' also resided in Petite Savanne. At the time of the incident, Mr Anselm was 63 years old, and Mr Phillip was 43 years old.
5. Mr Anselm spent the evening of Saturday, the 7th of March 2020 at a shop in Petite Savanne having drinks with some friends, including his neighbor, Mr Mahatma Coriette. The group of friends left the shop at about 10.00 pm to go to their respective homes.
6. Mr Coriette, extended an invitation to Mr Anselm to come over to his home and have dinner. Mr Anselm in response to the invitation from his neighbor stated that he would come sometime later.
7. Mr Coriette then went to his home on the 7th of March 2020 after they returned from the shop and about half an hour later he heard a banging sound. He went outside and he recognized Mr Phillip. Mr Coriette also heard Mr Anselm shouting. Mr Coriette went towards Mr Anselm's house and as he approached his neighbour's house, he saw Mr Phillip running away from Mr Anselm's house. Mr Coriette was able to recognise Mr Phillip in the night because the moonlight was bright and he also had a flashlight.
8. Mr Coriette entered Mr Anselm's house. He found Mr Anselm lying on the floor of the dining room. He noticed that Mr Anselm had wounds to the head, chest and leg and was frothing. Mr Coriette asked Mr Anselm how he was feeling to which he replied "Mister [expletive deleted] me up." Asked who? Mr Anselm replied "Johnny."
9. Mr Coriette left Mr Anselm's premises in search of assistance. He was unsuccessful in getting anyone to help him with Mr Anselm. Upon returning to Mr Anselm's home, Mr Anselm was not responding.
10. The police were summoned sometime after 4.00 am on Sunday, the 8th of March 2020. The police found Mr Anselm's motionless body on the floor of his house about 4 feet from the entrance door. The entrance door was broken.
11. Police Officer Dion Moses was dispatched by Police Sergeant Norman Alexander who was in charge of the investigation, to Darrroux, an area of Petite Savanne, to locate Mr Phillip.

When Officer Moses met Mr Phillip, he identified himself as a police officer and Mr Phillip began to cry and said to the Officer: "Dion, you see what Oho make me do for my own thing."

12. Officer Moses cautioned Mr Phillip, informing him of his right to remain silent.

13. Mr Phillip told the Officer:

"I go and talk to the man about my solar panel and other things he took from my house. He refused to give it to me. I take a stick and hit him on his body with it. This morning I hear people say they meet Oho in house dying."

14. Later that day, (Sunday, 8th of March 2020), Mr Phillip at 7.55 pm, dictated a statement to the police in which he said:

"Last night I went by Avondale house and ask him for my property they take. From that he give me an old answer. Then I use the stick to break the door until it open and I enter the house and is from there we get the argument. Then we start to fight and he use the stick and beat me and I grab it and I use it on him back. I beat him with it. That [is] all I have to say for now."

15. An autopsy was performed on the 12th of March 2020. According to the pathologist, Dr Idelmys Alarcon, Mr Anselm died from hypovolemic shock due to internal bleeding due to several fractures and ruptures of organs.

16. The pathologist found that there were extensive blunt force type injuries, and listed:

- i. a fracture in the right parietal occipital that measured 9 cm;
- ii. fracture of the right ribs – 6th to 11th;
- iii. fracture to the right femur; and
- iv. fracture to the right hip.

17. There was a friction burn that measured 11 x 2 cm on the right shoulder region.

18. There was a laceration to the scalp at the level of the parietal bone at the junction of both right and left that measured 7 x 1 cm.

19. Dr Alarcon also found that there was:

- i. Rupture to the right lobe of the liver;
- ii. Rupture of the tail of the pancreas;
- iii. Rupture of the right kidney;
- iv. Severe cerebral edema;
- v. Pulmonary hemorrhage;
- vi. Acute tubular necrosis;

- vii. Acute hepatic steatosis;
- viii. Permeability pulmonary edema;
- ix. Generalized organ congestion;
- x. Hypertrophy cardiomyopathy;
- xi. Severe atherosclerotic of aorta and branches (Grade III).

Excised narrative

20. For completeness, the parts of the State's facts that Mr Phillip denied and which must be excised from the State's narrative were:
- i. That a few days prior to the incident, on Monday the 2nd of March 2020, Mr Phillip was armed with a cutlass and went to Mr Anselm's yard, accusing Mr Anselm of taking his manure. At Court, Mr Phillip said that he "had no talk with Avondale." That he did not threaten to kill Mr Anselm.
 - ii. That on Saturday the 7th of March 2020 he, Mr Phillip, did not go to Mr Anselm's yard at about 8.00 am, making accusations regarding the theft of his property and threaten to kill Mr Anselm.
21. In response to Mr Phillip's denials, the Learned Director of Public Prosecutions, Ms Sherma Dalrymple, stated that the facts which Mr Phillip denied was disclosed in the witness statements in the deposition.
22. The State however did not request a 'Newton hearing' in keeping with the principles of **R v Newton (1983) 77 Cr App R 13** to establish what the facts were regarding the divergence between the State's allegations and Mr Phillip's denials. Any aggravating features connected with the reference to the 2nd of March 2020 and the morning of the 7th of March 2020 must be disregarded on sentencing, given the concession by the State in not pursuing a Newton hearing.

Victim Impact Statement

23. According to the Social Inquiry Report, interviews with members of the Petite Savanne community described Mr Anselm "as a quiet individual who was not known to be involved in any problems in the community.... [He] was not a violent individual and he did not deserve such cruelty."
24. Mr Anselm's sister, Ms Augustina Titre, said that the deceased was "a quiet and loving gentleman." She said that she knew the deceased and Mr Phillip were friends, but she did not know of any existing conflict between them prior to the incident. She said that the entire ordeal has been "traumatizing to the family and to this day it is painful to speak of Mr Anselm's death."

25. A niece of the deceased, Mr Veronica Titre, was reported as saying that even though it has been four years since Mr Anselm's murder, it still affects her "like it recently occurred." She noted that Mr Anselm "was healthy, able-bodied, and productive at the time of his death." She described him as "a family-oriented individual who was friendly with everyone around him."

Social Inquiry Report

26. Probation Officer, Ms Emmanuelina Toussaint, submitted a Social Inquiry Report on the 9th of May 2024. In preparing her report, Ms Toussaint conducted a series of interviews between the 25th of April 2023 and the 8th of May 2024.
27. Ms Toussaint noted that:
- "Mr Phillip's attitude towards the offence of murder was 'indifferent.' While he stated that he felt bad for his actions, Mr Phillip did not directly express remorse.... According to Mr Phillip, he and the deceased were friends prior to the incident, and he did not intend to cause Mr Anselm's death. Mr Phillip acknowledged that his behaviours (sic) has caused much grief and pain to Mr Anselm's family."
28. The Probation Officer reported that Mr Phillip's daughter described him as "a hard-working individual" but acknowledge that the incident did not come as a surprise to her as Mr Phillip was "constantly being provoked in the community... and the police did not take any action to assist him."
29. A paternal aunt said that Mr Phillip "was not a bad individual, therefore knowledge of the incident came as a surprise."
30. A cousin said that Mr Phillip was "a kind person whom nothing was too much for him to assist someone with" and noted that he was "subjected to provocation within the community of Petite Savanne." The cousin "was not surprised about the incident given Mr Phillip's history of unpleasant experiences in Petite Savanne."
31. An uncle, who described Mr Phillip as "helpful," noted that "Mr Phillip would misbehave whenever he was under the influence of alcohol."
32. An individual noted to be Mr Phillip's friend, described him as "a good individual overall. However, when Mr Phillip consumes alcohol, he would get out of character and make violent statements."
33. The Probation Officer also did anonymous interviews with members of the community. Ms Toussaint reported that:

"Information obtained from these interviews describe Mr Phillip as a known violent individual who would often get into disagreements with others, particularly when he was under the influence of alcohol. It was also purported that Mr Phillip has a bad temper."

34. The Probation officer also noted that:

"The general view among the individuals interviewed is that Mr Phillip should receive the maximum custodial sentence. Community members are concerned that if justice is not served, the young men in the community may take matters into their own hands against Mr Phillip."

35. Ms Toussaint, in the conclusion of her report, noted that Mr Phillip "was characterized as possessing violent tendencies particularly when under the influence of alcohol. Mr Phillip acknowledged his wrongdoing but did not express any remorse for his actions."

Sentencing Hearing

36. Counsel Mr Bernard Pacquette in his mitigation noted that Mr Phillip was now 47 years old. Counsel said that Mr Phillip was born in Marigot, but moved to Petite Savanne when he was 2 years old to live with his paternal grandparents. Mr Phillip has 5 sisters and one brother. His formal education ended in Form 3. Mr Phillip has an adult daughter who is a teacher.

37. Mr Pacquette stated that his client got along well with the deceased and that he was remorseful. Counsel said that Mr Phillip would like justice to be tempered with mercy. Mr Pacquette noted that the State had not provided any antecedent record with regard to Mr Phillip, so Mr Phillip must be treated as a person with no previous convictions. Counsel was of the view that Mr Phillip was entitled to benefit from his early guilty plea.

38. Mr Pacquette read a statement that he said was dictated to him by Mr Phillip:

"My doing caused the death of Avondale, whom I had known for a very long time. My heart hurts. I am sorry for the family of the deceased. I had no intention to kill him or anyone else. Today, I'm locked up at the State Prison for my own doing. Let me say I am sorry for what happened."

39. Two things are particularly notable about the statement presented by Mr Pacquette:

- It comes after the Probation Officer's report was submitted to all the parties in this matter in which Ms Toussaint noted that Mr Phillip did not express any remorse for the offence.
- The statement was presented by Counsel and had considerably less weight than if Mr Phillip – whether from the dock or the witness box – had expressed those sentiments directly in Court.

Discrimination and inaction?

40. Counsel Pacquette in his submissions stated that Mr Phillip remembers experiencing discrimination from members of the community of Petite Savanne because he was not from that area.
41. A similar sentiment was expressed by one of Mr Phillip's cousins who said to the Probation Officer that "villagers discriminated against Mr Phillip and treated him like he did not belong in the community merely because his mother was from a different community."
42. Mr Phillip's daughter said to the Probation Officer that she could understand how Mr Phillip "may have lost his temper in the heat of the moment." She told the Probation Officer that "if his many complaints to the police were addressed, he would have been in the free world and contributing productively to the society."
43. The statement of Corporal Dion Moses at page 27 of the deposition described what happened during the morning of Saturday the 7th of March 2020, at the Police Station prior to Mr Phillip killing Mr Anselm that night; he stated:

"...at about 9 am, I was on duty at the Grand Bay Police Station when the accused [Mr Phillip] came to the station and reported [against] the deceased [Mr Anselm] and Mahatma Coriette for breaking and entering his house at Rogiste, Petite Savanne, and stealing his solar panel and other electronic items. I then informed the accused that it was my intention to attend his report the same day. The accused [Mr Phillip] then said 'I am on my way to town to do some groceries; I not sure what time I coming up, so best you check me about 10 tomorrow morning.' I agreed to the accused request and he left the station."

44. Although Mr Phillip went to the police station and made arrangements with the Corporal of Police to follow up on his complaint at a specified time the following day, he went to Mr Anselm's home during the night after Mr Anselm returned from the bar, sometime after 10.00 pm on Saturday the 7th of March 2020, broke into the house and beat Mr Anselm with a stick. After the beating, Mr Anselm could not move. Mr Anselm subsequently died from the injuries inflicted on him from Mr Phillip's beating.

Sentencing Guidelines

45. **Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019** for the Sentencing for the Offence of Murder was re-issued on the 12th of April 2021: (**Practice Direction 8E No: 1 of 2021**).
46. There are four types of sentences which may be imposed on an adult for murder:

- (1) a sentence of death,
- (2) a whole life sentence,
- (3) a determinate sentence, or
- (4) detention at the court's pleasure.

47. A person convicted of murder, in the absence of a death penalty notice, is liable to be imprisoned for life.
48. A sentence of death is inapplicable in this case; there was no death penalty notice and that penalty may only be imposed in certain specified circumstances which are not present here. Similarly, detention at the court's pleasure cannot be considered, since such a sentence is imposed in certain circumstances relating to the offender and those circumstances do not apply to Mr Phillip.
49. Mr Phillip's offending would ordinarily attract a whole life sentence under paragraph 4 of the Guidelines, which provides that such a sentence be imposed if:
- a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
 - b) the offender was an adult when he committed the offence.
50. The seriousness level for this offence was exceptionally high. The victim was a senior citizen. Mr Anselm was in the privacy (and presumed security) of his own home. Mr Anselm, did not interfere with nor did he provoke Mr Phillip. Mr Anselm was badly beaten and left to suffer a painful death. The blows Mr Anselm received caused multiple internal ruptures in addition to the external injuries. Ultimately, Mr Anselm bled to death.
51. Mr Phillip's actions of breaking into Mr Anselm's house involved, at the very least, trespass to property and damage to property. However, on careful scrutiny, the actions may well amount to aggravated burglary. Mr Phillip, having entered the victim's property as a trespasser with the intent to inflict grievous bodily harm on the victim and at the time of the offence had with him a blunt object.
52. As noted earlier, Mr Phillip was aged 43 years at the time of the offence, therefore he falls within the requirement of 4 b. of the **Sentencing Guidelines** - that the offender must be an adult at the relevant time.
53. Paragraph 7 a. of the **Sentencing Guidelines** provide that "where the offender has pleaded guilty and would otherwise face a whole life term" then the offender ought to receive a determinate sentence, but "in such a circumstance, there would usually be no further discount on account of the guilty plea."

54. According to the Guidelines, "the appropriate starting point is a determinate sentence of 40 years, within a range of 30-50 years."

Adjustment for aggravating and mitigating factors

55. The starting figure must be adjusted following a consideration of the aggravating and mitigating factors first, in relation to the offence, then secondly, in relation to the offender.

56. A notable aggravating factor with regard to the offence is that there must have been a significant degree of planning or premeditation on Mr Phillip's part. Although both Mr Anselm and Mr Phillip lived in Petite Savanne, they were not neighbours; Mr Anselm lived in Rogiste and Mr Phillip in Darroux. Mr Anselm was away from his home for several hours on Saturday the 8th of March 2022 – from about 4.00 pm until 10.00 pm. It was after he returned to his home that Mr Phillip entered the premises and committed the act which resulted in Mr Anselm's death. Also, Mr Phillip not only, as the saying goes, 'took the law into his own hands,' but he did so in the worse way possible, by bludgeoning the victim to death.

57. Some of the factors that would ordinarily be regarded as aggravating factors cannot now be considered, as they were earlier noted and considered in evaluating the seriousness of the offence; to include them again would amount to 'double counting.' Those factors that were already considered and which cannot again be a part of the assessment of the aggravating factors are:

- the fact that Mr Anselm, given his age, was a vulnerable person;
- the offence occurred at the victim's home;
- the violence inflicted on the victim was unprovoked; and
- there was multiple offending on the part of Mr Phillip; it was not just the act of inflicting grievous bodily harm which had almost immediate fatal consequences, but Mr Phillip's unlawfully entered the victim's premises.

58. There are no mitigating factors in relation to the offence. The suggestion that Mr Phillip went to speak with Mr Anselm about missing items cannot be a mitigating factor but instead it points towards an ill intent, particularly since Mr Phillip earlier made a report to the police and a time that he suggested was agreed to by the police officer to address the matter.

59. There were no aggravating factors pertaining to the offender.

60. The mitigating factors in favour of Mr Phillip are that he is a first time offender; so he is of previous good character.

Deduction

61. According to the Inmate Incarceration History for Mr Phillip provided by the Dominica Prison Service on the 23rd of April 2024, Mr Phillip was on remand for a total of four years and one week up to the day of his conviction. He must accordingly be credited with the time he spent on remand.

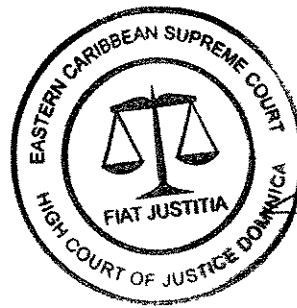
Sentence

62. Mr Johnny Vivian Phillip, for the murder of Mr Timothy Avondale Anselm to which he pleaded guilty, is sentenced as follows:

- i. The starting point of the sentence is forty years. This is the mid-point of the starting range of 30 to 50 years. This figure is considered reasonable, taking into account the manner in which the offence was executed.
- ii. With respect to adjustments for aggravating and mitigating factors, the scale is overwhelmingly tilted in favour of an increase for the preponderance of aggravating circumstances. Accordingly the starting figure is increased by four years to 44 years.
- iii. Mr Phillip entered an early guilty plea – although not at the very earliest opportunity – however he cannot get any additional discount since it was considered that a whole of life sentence was applicable in the circumstances of this case, but a term of years is being imposed instead because of his guilty plea. The **Sentencing Guidelines**, as pointed out earlier, (paragraph 53), provide that “where the offender has pleaded guilty and would otherwise face a whole life term” then the offender ought to receive a determinate sentence, but “in such a circumstance, there would usually be no further discount on account of the guilty plea.”
- iv. Time spent on remand of four years and one week must be deducted from the figure of 44 years, leaving 39 years, 11 months and 3 weeks.
- v. No ancillary orders are required.
- vi. Accordingly, Mr Johnny Vivian Phillip for the offence of murder is sentenced to a term of 39 years, 11 months and 3 weeks with effect from the date of his conviction, the 23rd day of April 2024.

Colin Williams
High Court Judge

By The Court



[Handwritten signature]
Registar (1/13)

